



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

David M. Carter
Carter, DeLuca, Farrell & Schmidt, LLP
Suite 225
445 Broad Hollow Road
Melville NY 11747

COPY MAILED

APR 14 2004

In re Application of	:	OFFICE OF PETITIONS
William M. Bouverie	:	
Application No. 10/668,127	:	DECISION ON PETITION
Filed: September 22, 2003	:	UNDER 37 C.F.R. §1.182
Attorney Docket No. 772-39	:	
Title: ADJUSTABLE SENSOR	:	
ASSEMBLY FOR PRINTERS	:	

This is a decision on the Petition under 37 C.F.R. §1.182, filed February 9, 2004, requesting that one drawing sheet containing Figure ten (10) be accorded a filing date of September 22, 2003, as part of the original disclosure.

On September 22, 2003, the above-identified application was filed. On December 16, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice to file missing parts of nonprovisional application (notice)", stating that the application had been accorded a filing date of September 22, 2003, and advising applicant that Figure ten (10) appeared to have been omitted. The notice further indicated that an executed oath or declaration and the surcharge associated with the late filing of an oath or declaration would be required.

In response, on February 9, 2004, applicants filed the present petition. The petition is further accompanied by the petition fee, one (1) drawing sheet containing the missing figure, and a copy of Petitioner's itemized postcard.

Receipt of the declaration and the surcharge associated with the late filing of the same is acknowledged.

Upon review of the record, Figure ten (10) has not been located among the application papers. Petitioner has included a copy of his return postcard, which indicates that eight (8) sheets of drawings were filed with the Office on September 22, 2003. As Petitioner would like the Office to hold that nine (9) sheets of drawings were included on filing, this presents a bit of a problem. Petitioner explains that there was an error on both the postcard receipt and the Utility Patent Application Transmittal sheet, and that both should have indicated that nine (9) sheets of drawings were filed.

It is noted that the Utility Patent Application Transmittal sheet also states that eight (8) sheets of drawings were included on filing.

The argument and evidence presented are not persuasive.

Regarding the petitioner's argument, the PTO file is the official record of the papers originally filed in this application. A review of the official file reveals that Figure ten (10) was not included on filing. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

Regarding the evidence the petitioner has submitted, both the transmittal sheet and the postcard receipt cut against petitioner's assertion that nine (9) sheets of drawings were filed in the Office on September 22, 2003. As petitioner is no doubt aware, the PTO has a well established and well publicized practice of providing a receipt for papers filed in the PTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the PTO with a self-addressed postcard identifying the paper. A postcard receipt which *itemizes and properly identifies* the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO¹.

Both the Utility Patent Application Transmittal and the copy of the postcard receipt supplied by the petitioner indicate that eight (8) sheets of drawings were deposited with the Office, and a review of the file has located eight (8) sheets of drawings. As such, it certainly appears that both the postcard and the Transmittal sheet correctly reflect what was filed on that day.

As such, the petition must be dismissed.

¹ See MPEP 503.

The drawing sheet containing Figure ten (10) which was filed with the instant petition will not be entered.

The petition fee of \$130.00 will not be refunded, as this petition was not necessitated by any error on the part of the Office.

A preliminary amendment requesting the entry of this sheet of drawings should be filed before first action on the merits, at which time the sheet of drawings will of course be reviewed by the Examiner for new matter². The amendment is not new matter if the substance was a part of the disclosure of the prior application. If the amendment is determined to constitute new matter, petitioner will either have to amend the specification so that these materials are not required, or accept the filing date of this petition, February 9, 2004, as the date of filing for the application.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 22, 2003, using only the application papers filed on that date.

Any inquiries related to this decision should be directed to the undersigned at (703) 305-0011.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

² See MPEP 608.02(a).